

JOHN DOE TRUST

SAMPLE THIRD PARTY TRUST

by

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Great Neck

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THIS TRUST AGREEMENT made and entered into this ____ day of January, 2017, between **JANE DOE**, Grantor, with address at _____ (hereinafter referred to as the "Grantor"), and **JANE DOE**, Trustee, residing at _____ (hereinafter referred to as the "Trustee").

WHEREAS, the Grantor desires to provide for the supplemental needs of **JOHN DOE** (hereinafter sometimes referred to as "JOHN") by placing assets into this Trust to be held by the Trustee as part of the Trust Estate (said monies being hereinafter referred to collectively as the "Trust Estate") for purposes hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Trustee agrees to hold the Trust Estate, IN TRUST, NEVERTHELESS, for the following uses and purposes and subject to the terms and conditions hereinafter set forth:

ARTICLE 1
GENERAL PROVISIONS

(1) LAWS GOVERNING. This Agreement shall be construed and regulated in all respects by the laws of the State of New York. This Trust Agreement shall be interpreted and the administration of the Trust shall be governed by the laws of the State of New York; provided, however, that Federal law shall govern any matter alluded to herein that shall be related to or involve government entitlements such as SSI, Medicaid and or other federal benefit programs.

(2) NAME OF TRUST. This Trust shall be known as the "**JOHN DOE TRUST**" and it shall be sufficient that it be referred to as such in any deed, assignment, bequest or devise.

(3) PURPOSE. 1. This Trust is created expressly for the sole benefit of **JOHN DOE**. This Trust is to enable **JOHN DOE** to qualify or continue to qualify for medical assistance under the Medicaid program as provided for by the Omnibus Budget Reconciliation Act of 1993 ("OBRA 1993"). In the administration of the Trust, the Trustees shall undertake all acts necessary to establish and maintain **JOHN DOE**'s eligibility for medical assistance under the Medicaid program.

(4) TRUST IRREVOCABLE. This Trust is hereby declared to be irrevocable and it shall not at any time, by any person or persons, be amended, altered or modified in any manner.

Notwithstanding the above to the contrary, in the event that the Trust Estate is challenged or faces imminent invasion by any governmental department or agency in such a way as to affect **JOHN DOE**'s eligibility for benefits available under any governmental program, the Trustee or a Court of competent jurisdiction is empowered to amend this Trust so as to maintain **JOHN DOE**'s eligibility for benefits under such governmental program.

(5) FAMILY MEMBERS. At the time of the execution of this Trust, **JOHN DOE**'s Family consists of:

LIST FAMILY MEMBERS

(6) ADDITIONS TO CORPUS. Grantor, with written notice to the Trustee, may add from time to time to the Trust Estate any property by deed, Will or otherwise. In no event can **JOHN DOE** add his own assets to the Trust Estate.

ARTICLE II
DISTRIBUTION OF INCOME AND PRINCIPAL DURING
LIFETIME OF JOHN DOE

The Trustee shall hold, manage, invest and reinvest the trust share for **JOHN DOE**'s benefit, as provided for herein.

(a) The Trustee shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, shall, at any time and from time to time, apply for the benefit of **JOHN DOE**, in-kind, so much (even to the extent of the whole) of the net income and/or principal of this Trust as the Trustee shall deem advisable, in his or her sole and absolute discretion, subject to the limitations set forth below. The Trustee shall add to the principal of such Trust the balance of net income not so paid or applied.

(b) It is Grantor's intent to create a Supplemental Needs Trust that conforms to the provisions of Section 7-1.12 of the New York Estates, Powers and Trusts law, or any successor statute thereto.

Grantor intends that the Trust assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city, or other governmental entity for which **JOHN DOE** may otherwise be eligible or that **JOHN DOE** may be receiving. Consistent with that intent, it is Grantor's desire that, before expending any amounts from the net income and/or principal of this Trust, the Trustee consider the availability of all benefits from government or private assistance programs for which **JOHN DOE** may be eligible and that, where appropriate and to the extent possible, the Trustee endeavor to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of **JOHN DOE**.

(c) USE OF INCOME OR PRINCIPAL. None of the income or principal of this Trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal, state, county, city, or other governmental entity for

which **JOHN DOE** may otherwise be eligible or which **JOHN DOE** may be receiving.

(d) EPTL §7-1.6. Grantor directs that the provisions of Section 7-1.6 of the Estates, Powers and Trust Law of the State of New York, or any successor statute thereto, shall not be available to require any invasion of principal by the Trustees or any court.

(e) **JOHN DOE** does not have the power to assign, encumber, direct, distribute or authorize distributions from this Trust.

(f) In the event that the Trust Estate shall be challenged or in any way threatened with invasion of its funds by any governmental agency or creditor of **JOHN DOE** or his estate, the Trustee is authorized and empowered, in the Trustee's sole and absolute discretion, to terminate the Trust or any part thereof, and to distribute the remaining trust corpus and any accumulated or accrued income to the beneficiaries named herein as if **JOHN DOE** is deceased.

(g) FOOD AND SHELTER. Notwithstanding the above provisions, the Trustee may make distributions to meet **JOHN DOE**'s need for food, shelter or health care even if such distributions may result in an impairment or diminution of **JOHN DOE**'s receipt or eligibility for government benefits or assistance but only if the Trustee determines that: **JOHN DOE**'s needs will be better met if such distribution is made, and (ii) it is in **JOHN DOE**'s best interests to suffer the consequent effect, if any, on his eligibility for or receipt of government benefits or assistance

(h) NULLIFICATION OF PARAGRAPH (g). Provided, however, that if the mere existence of the Trustee's authority to make distributions pursuant to Paragraph(g) shall result in **JOHN DOE**'s loss of government benefits or assistance, regardless of whether such authority is actually exercised, this paragraph shall be null and void and the Trustee's authority to make such distributions shall cease and shall be limited as provided above, without exception.

(i) Notwithstanding the above provisions to the contrary, if in order to qualify the funding of this Trust as a Medicaid exempt transfer by the Grantor and to qualify this Trust as an unavailable resource for purposes of Medicaid eligibility of **JOHN DOE**, then the Trustee shall provide for the spending of the Trust assets for the benefit of **JOHN DOE** on a basis that is actuarially sound based on **JOHN DOE**'s life expectancy.

(j) OTHER NEEDS AND COMFORTS. The Trustee has discretion to use income and/or principal to insure that the beneficiary enjoys the therapeutic benefits of education, vocational training, hobbies, vacations, modes of transportation, entertainment and any other need and/or comforts **JOHN DOE**

may require to enhance his quality of life. This discretion shall include the use of income for needed medical care not paid for by private health insurance or government entitlements. This provision shall include the purchase of any equipment, treatment, computer, services or goods that would enhance the quality of **JOHN DOE**'s life.

ARTICLE III
ADMINISTRATION OF THE ESTATE OF JOHN DOE

Upon **JOHN DOE**'s death, the Trustee, in the Trust's sole and absolute discretion, may pay directly or indirectly: (i) funeral expenses of **JOHN DOE**'s, (ii) any and all death taxes imposed upon **JOHN DOE**'s estate, (iii) court filing fees of a probate, administration or estate proceeding and any and all legal and accounting fees related to **JOHN DOE**'s estate.

ARTICLE IV
DISPOSITION OF TRUST ESTATE UPON JOHN DOE'S DEMISE

(1). **DISTRIBUTIONS.**

- (a) In the event **JOHN DOE** predeceases the Grantors, then the Trust shall terminate and the Trustees shall pay and distribute the Trust Estate to the issue of **JOHN DOE**, per stirpes and subject to the provisions of Article V herein. In the further event **JOHN DOE** predeceases the Creators leaving no surviving issue, the Trustees shall pay and distribute the Trust Estate to the issue of the Creators, per stirpes.
- (b) In the event Creators predecease **JOHN DOE**, then upon the death of **JOHN DOE**, the Trustees shall immediately pay and distribute the Trust Estate to the issue of **JOHN DOE** per stirpes and subject to the provisions of Article V herein. In the event **JOHN DOE** leaves no surviving issue, the Trustees shall pay and distribute the Trust Estate to the issue of the Creators, per stirpes.

(2). **DISTRIBUTION TO CONTINGENT BENEFICIARIES.** In the event that none of Grantor's beneficiaries names hereunder survive to the time the Trust Estate is to vest, then, at the death of the last of them, the then remaining Trust Estate shall be distributed to Grantor's heirs at law under the laws of the State of New York.

(3) **DISTRIBUTIONS TO BENEFICIARIES UNDER AGE TWENTY FIVE.**
Notwithstanding any above provision to the contrary, if under this Article any such share shall become payable to a beneficiary who is less than twenty-five (25) years of age, then the Trustees shall distribute the entire balance of the principal so held in one lump sum to said

beneficiary at age twenty-five (25), and, in the meantime, the Trustees shall pay as much of the net income and/or principal of said share as the Trustees shall deem necessary or proper in the Trustees' sole discretion to or for the benefit of said beneficiary and his or her legal dependents, if any, including education. In the event said beneficiary does not attain age twenty-five (25), then the balance of said share shall be distributed to said beneficiary's issue, per stirpes.

(4) PERSON WITH A SEVERE AND CHRONIC OR PERSISTENT DISABILITY

Any provision hereof to the contrary, if any person (other than the Grantor) with a severe and chronic or persistent disability as defined by Section 7-1.12 of the New York Estates, Powers and Trusts law, as amended, is entitled to a trust share hereunder, then said beneficiary's interest in the trust share shall be held and managed by the Trustee for the benefit of said beneficiary, as provided for herein.

A. The Trustee shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, shall, at any time and from time to time, apply for the benefit of the beneficiary, so much (even to the extent of the whole) of the net income and/or principal of this Trust as the Trustee shall deem advisable, in their sole and absolute discretion, subject to the limitations set forth below. The Trustee shall add to the principal of such Trust the balance of net income not so paid or applied.

B. It is the Grantor's intent to create a Supplemental Needs Trust which conforms to the provisions of Section 7-1.12 of the New York Estates, Powers and Trusts law, or any successor statute thereto. The Grantor intends that the Trust assets be used to supplement, not supplant, impair or diminish any benefits or assistance of any federal, state, county, city, or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving. Consistent with that intent, it is the Grantor's desire that, before expending any amounts from the net income and/or principal of this Trust, the Trustee consider the availability of all benefits from government or private assistance programs for which the beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee endeavors to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of the beneficiary.

C. None of the income or principal of this Trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal, state, county, city, or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving.

D. No judge of any Court shall have the power to order the invasion of principal in contravention of this provision. This provision is intended to negate and eliminate any discretion granted to any Court by Section 7-1.6 of the Estates Powers and Trusts Law (E.P.T.L.).

E. The beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from this Trust.

F. Notwithstanding the above provisions, the Trustee may make distributions to meet the beneficiary's need for food, clothing, shelter or health care even if such distributions may result in an impairment or diminution of the beneficiary's receipt or eligibility for government benefits or assistance but only if the Trustee determines that:

(i) the beneficiary's needs will be better met if such distribution is made, and (ii) it is in the beneficiary's best interests to suffer the consequent effect, if any, on the beneficiary's eligibility for or receipt of government benefits or assistance; provided, however, that if the mere existence of the Trustee's authority to make distributions pursuant to this paragraph shall result in the beneficiary's loss of government benefits or assistance, regardless of whether such authority is actually exercised, this paragraph shall be null and void and the Trustee's authority to make such distributions shall cease and shall be limited as provided above, without exception.

G. Upon the demise of said beneficiary, any balance remaining of the trust share shall be distributed to **JACK DOE**; or, if **JACK DOE** shall not then be living, then to the surviving issue of the parent of the beneficiary *per stirpes* and subject to the provisions of **ARTICLE IV (4)** herein.

ARTICLE V **PROVISIONS RELATING TO THE TRUST ESTATE**

(1) **SPENDTHRIFT PROVISION**. No interest of any beneficiary in the income or principal of any trust shall be subject to pledge, assignment, sale or transfer in any manner, nor shall any beneficiary have power in any manner to anticipate, charge or encumber his or her interest, nor shall the interest of any beneficiary be liable while in the possession of the Trustee for the debts, contracts, liabilities, engagements or torts of the beneficiary.

(2) **GRANTOR'S POWERS**. The Grantor reserves the power to reacquire the Trust principal by substituting other property of an equivalent value.

ARTICLE VI **POWERS AND DUTIES OF TRUSTEE**

(1) **INVESTMENTS**. The Trustee of each Trust established hereunder (including any Successor Trustee) shall have the continuing, absolute and discretionary power to deal with any property, real or personal, held in such Trust(s). Such power may be exercised independently and without the prior or subsequent approval of any court or judicial authority, and no person dealing with such Trustee shall be required to inquire into the propriety of any of the actions of such Trustee. The Trustee shall not be limited to the type and character of investments in which the Trustee may invest the funds of this Trust, so long as the Trustee uses reasonable prudence and judgment in the selection of investments. The Trustee shall have the following general powers, in addition to, and not by way of limitation of, the powers provided by Section 11-1.1 of the New York Estates, Powers and Trusts Law:

1. To retain any property so long as such retention appears advisable, and to exchange any such property for other properties and to retain such items received in exchange.

2. To retain such property for any period, whether or not the same be of the character permissible for investments by fiduciaries under any applicable law, and without regard to any effect the retention may have upon the diversification of the investments.

3. To lease any such property beyond the period fixed by statute for leases made by a Trustee and beyond the duration of the Trust Estate created hereunder.

4. To borrow money for any purpose from any source including the Trustee hereunder, and to secure the repayment of any and all amounts so borrowed by mortgage or pledge of any property.

5. To invest any part or all of the principal of the Trust Estate in any common trust fund, legal or discretionary, which may be established and operated by and under the control of the Trustee.

6. To allocate in the Trustee's sole discretion, in whole or in part, to principal or income, all receipts and disbursements for which no express provision is made hereunder, which allocation shall fully protect the Trustee with respect to any action taken or payment made in reliance thereon. We have added language to prevent assets being available to Medicaid.

7. To retain and pay for the benefit of the estate and any beneficiary hereunder attorneys, accountants, financial planners, social workers, health care professionals and any other professional required in the sole discretion of the Trustee, subject to the limitations of Article II.

8. To sell, transfer or exchange any and all Trust assets, real or personal, including the Grantor's residence.

(2) ADDITIONAL POWERS. The foregoing provisions notwithstanding, it is recognized that the Trustee is neither licensed nor skilled in the field of social services. The Trustee may seek the counsel and assistance of **JOHN DOE's** guardian, if any, of **JOHN DOE's** physician(s), and of any state and local agencies that have been established to assist the handicapped or mentally disabled, and similar resources. The Trustee may use these resources to aid **JOHN DOE's** guardian, if any, as appropriate, in identifying programs that may be of social, financial, developmental or other assistance to **JOHN DOE.** However, the Trustee shall not in any event be liable to **JOHN DOE** the remainder beneficiaries of the Trust or any other party for his acts as Trustee hereunder so long as he acts reasonably and in good faith. For example, the Trustee, as well as **JOHN DOE's** guardian, if any, shall not be liable for the failure to identify each and every program or resource that might be available to **JOHN DOE** on account of his disabilities.

(3) ACCOUNTINGS. The Trustee shall render to the then current income beneficiary(s), statements of account of receipts and disbursements at least annually, upon the written request of a beneficiary. In addition, a Trustee shall account to the then current income beneficiary(s) upon resignation of said Trustee within thirty (30) days from the said resignation.

(4) LIMITATIONS ON TRUSTEE-BENEFICIARY. Notwithstanding anything

herein to the contrary, no individual Trustee who is also a beneficiary hereunder shall have any right, power, duty or discretion hereunder concerning the Trust Estate, if such right, power, duty or discretion conferred upon said Trustee under this Agreement is determined to be a general power of appointment under Section 2041 of the Internal Revenue Code of 1986, as amended, which would cause any assets of the Trust Estate to be included in the estate of said Trustee-Beneficiary at death. Any such right, power, duty or discretion with such effect shall be null and void with respect to said Trustee-beneficiary. In such event, the other Trustee(s) shall have the full authority to act.

ARTICLE VII **TRUSTEES**

(1) **APPOINTMENT OF TRUSTEES.** Grantor hereby nominates **JANE DOE** as Trustee.

(2) **APPOINTMENT OF SUCCESSOR TRUSTEES.** Upon the death, incapacity, resignation or discharge of **JANE DOE, JACK DOE**, residing at _____, shall be the Successor Trustee.

(3) **REMOVAL AND RESIGNATION OF TRUSTEES.**

- (a) A Trustee may resign by giving written notice, a signed and acknowledged instrument, delivered to (i) **JOHN DOE**; (ii) the Guardian of **JOHN DOE**, if any; (iii) any Successor Trustee; (iv) the Grantor; and (v) the local Social Service agency.
- (b) The Grantor reserves the right to remove any Trustee upon three (3) days written notice and replace said Trustee with a Successor Trustee. In the event the Grantor removes but fails to replace the Trustee, then the Successor Trustee as provided for herein shall replace the Trustee.

(4) **HOLD HARMLESS.** No Trustee shall be liable or responsible for any loss or damage arising by reason of any act or omission to or by the Trustee or in connection with any activities carried out under this Trust, except for the Trustee's own gross negligence, willful neglect or unlawful act.

(5) **COMPENSATION.** The Trustee shall be entitled to receive compensation for services rendered hereunder as may be allowable under the laws of the State of New York and shall also be reimbursed for all reasonable expenses incurred in the management and protection of the Trust Estate and travel and lodging expenses to and from the Trustee's residence and the residence of the beneficiary hereunder as frequently as the Trustee determines in the Trustee's sole discretion.

(6) **BOND.** No bond or other security shall be required of any Trustee or Successor Trustee named hereunder.

ARTICLE VIII
MISCELLANEOUS

(1) PARAGRAPH HEADINGS. The paragraph headings used are for convenience only and shall not be resorted to for interpretation of this Trust. Wherever the context so requires, the masculine shall include the feminine and neuter and the singular shall include the plural.

(2) VALIDITY OF PROVISIONS. If any portion of this Trust is held to be void or unenforceable, the balance of this Trust shall nevertheless be carried into effect.

IN WITNESS WHEREOF, **JANE DOE**, Grantor, and **JANE DOE**, Trustee, have signed and sealed this Trust Agreement.

JANE DOE, Grantor

JANE DOE, Trustee

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the _____ day of _____, in the year 2017, before me, the undersigned, a Notary Public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Notary Public

Exhibit A to the JOHN DOE Trust DATED January , 2017:

Receipt of the above listed items is hereby acknowledged by:

JANE DOE, Trustee

DATED:

WITNESS

Anatomy of a Trust: **Supplemental Needs Trusts**

ELIZABETH FORSPAN, ESQ.

April 2017



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Basics and Required Terms

- A special needs trust is established for a person with special needs to supplement rather than supplant any benefits the person with special needs may receive from government programs and is designed to hold and manage assets for that person's benefit while not compromising his or her access to important government benefits.
- A properly drafted special needs trust will allow the beneficiary to receive government benefits while still having funds in the trust.
- There are two main types of special needs trusts:
 - First-party trust
 - Third-party trust
 - Both name the individual with special needs as the beneficiary

First and Third Party Special Needs Trusts

	Source of Funds	Who Establishes	Trustee	Distribution Upon Death
First Party Trust	Disabled Individual's funds prior to age 65	Parent, Grandparent, Guardian, Court, The Individual*	Grantor's wishes	Medicaid payback, then remainder beneficiaries
Third Party Trust	Anyone except beneficiary	Anyone except beneficiary	Grantor's wishes	Grantor's wishes

*Special Needs Trust Fairness Act (December 2016)

Previously, such trusts could only be established by a parent, grandparent, legal guardian or a court. Under the new federal law, individuals with disabilities can create a special needs trust for themselves rather than relying on others to do so. State's laws must be followed.

Third Party SNT: History

- Matter of Escher. 94 Misc. 2d 952, 407 N.Y.S.2d 106 (Surr. 1978) aff'd mem. 75 A.D.2d 531 (1st Dept. 1980), aff'd 52 N.Y. 1006, 438 N.Y.S.2d 293) (1981)
- Third party trust funds were declared to be good public policy in order to provide services for disabled individuals to supplement rather than supplant their government benefits
- EPTL 7-1.12: NYS Legislature enacted a statute to encourage third parties to establish Supplemental Needs Trusts for loved ones with disabilities.

Third-Party SNT

- Definitions:
- For SSI purposes, SSA defines a third party trust as **"a trust established by someone other than the beneficiary as grantor."**
- It defines a grantor as **"the individual who provides the trust principal (or corpus)."**

Third-Party Special Needs Trust

- Requirements:
 - Beneficiary did not create the trust
 - Trust does not hold Beneficiary's assets
 - Beneficiary is not Trustee
 - Trustee has sufficient discretion to withhold distributions

Third-Party SNT

Requirements:

- No Medicaid “pay-back” requirements
 - Grantor can leave any remaining funds to whomever he or she wants
- Revocable during life of Grantor
- If the Grantor’s spouse is the beneficiary of the SNT, it must be established by the terms of the Settlor’s will (not a Revocable Trust)
- More drafting flexibility as long as correct distribution standard is used

Third Party SNT: Lifetime vs. Testamentary

- Testamentary Trust:
 - Any person may establish a testamentary trust for the benefit of a disabled person
- Spousal Testamentary Trusts:
 - The trust may allow the discretionary invasion of principal
 - The trust may direct that all income be provided to the surviving spouse
- Lifetime/Inter-vivos Trust
 - The creator can be a person or entity other than the beneficiary's spouse or a person with a legal obligation to support the beneficiary
 - In general, parents are not included in this prohibition of a legally responsible relative funding an inter-vivos trust for a minor child
 - EPTL 7-1.12(a)(5)(iv)

First Party SNT: History

- In 1993 Congress enacted The Omnibus Budget Reconciliation Act of 1993 (OBRA-1993).
- This law permitted a parent, grandparent, guardian or court to establish a self-settled SNT for an individual with disabilities under the age of 65 with the individual's own assets.
- Self-settled SNTs have become an important planning tool for many individuals with disabilities who are in receipt of certain government benefits and then receive funds as a result of an inheritance, personal injury lawsuit or otherwise.
- OBRA-93 provided that assets contained in a properly drafted self-settled SNT don not disqualify the individual with disabilities from continuing to receive government benefits such as Supplemental Security Income (SSI) and Medicaid.
- The assets contained in the SNT may be used to improve the quality of life of the individual with disabilities without sacrificing the government benefits.

First Party SNT: Recent Changes

- Special Needs Trust Fairness Act (December 13, 2016)
- Previously, such trusts could only be established by a parent, grandparent, legal guardian or a court.
- OBRA-93 failed to provide a mechanism for individuals with disabilities who had capacity to independently establish a self-settled SNT.
- The 21st Century Cures Act inserts the term “the individual,” after “for the benefit of such individual by.”
- Under the new law, individuals with disabilities can create a special needs trust **for themselves** rather than relying on others to do so.

First Party SNTs

- Common Situations where a First Party SNT is necessary:
 - Personal Injury Award
 - Inheritance or Gift
 - Minor with a Disability Turns 18
 - Recently Disabled Adult

First Party SNT (d)(4)(A) SNT Requirements

- Authorized by 42 U.S.C. §1396p(d)(4)(A) and has the following characteristics:
 - Irrevocable
 - Established by parent, grandparent, legal guardian, court, or the individual (Special Needs Trust Fairness Act, December 2016)
 - For the sole benefit of a person with a disability who is *under the age of 65*
 - Provide that on the death of the beneficiary, the trustee must repay Medicaid for all benefits received by the beneficiary during his or her lifetime to the extent that funds remain in the trust at the beneficiary's death
 - Upon the beneficiary's death every state in which the beneficiary received benefits must be paid back its proportional share of the assets remaining in the trust.

First Party SNT: Termination “Payback Provision”

- Upon the termination of an SNT, the Trustee may pay
 - Reasonable fees for administration of trust
 - Taxes
- Then the Trustee must pay all State Medicaid agencies
- Not allowed prior to payback
 - Funeral Expenses (prepay for funeral)
 - Preexisting debts

“Sole Benefit Rule”

- When a third party’s assets fund a trust for a person with a disability so that the third party will receive Medicaid benefits immediately, that trust must be used for the **sole benefit** of the person with a disability (“the beneficiary”), as two individuals, in essence, will be receiving benefits without any Medicaid transfer penalty
- A trust is considered to have been established **for the sole benefit of** an individual if the trust benefits no one but that individual, whether at the time the trust is established or at any time for the remainder of the individual's life.
- The **sole benefit trust** must be used solely for the benefit of the disabled beneficiary during his or her lifetime.
- State law requires that a **sole benefit trust**, established with the assets of one person for the sole benefit or a person with a disability under the age of 65 in which both individuals receive Medicaid, provide payback to the State upon the death of the Beneficiary or be used on an actuarially sound basis for the beneficiary during his/her lifetime

Coordination with Medicaid and SSI

- Medicaid: Excess Income Calculation
 - A Medicaid recipient residing in a nursing facility will pay all income but \$50/month to the facility to offset the cost of care
 - A Medicaid recipient residing in the community may retain income of \$825/month + \$20 disregard
 - Generally, cash income above the Medicaid allowable rates for a Community Medicaid recipient must be “spent down” on medical needs or via a Pooled Trust
 - However, a Pooled Income Trust may be funded monthly with the excess income and used to pay the nonmedical bills of the Medicaid recipient who receives Community Medicaid

Coordination with Medicaid and SSI

SSI Income:

- An individual eligible for SSI automatically qualifies for Medicaid in NY State
- The resource level for SSI is \$2,000 for a single individual
- For 2017, the highest federal benefit level for SSI for an individual residing in his own home is \$735/month
- When computing the monthly SSI payment, the SSA considers other income earned by the SSI recipient
- Unearned income, such as income provided by a trust, given in cash to the SSI recipient, will be deducted from the SSI stipend
- Income from the trust paid directly to the SSI recipient is countable unearned income that reduces the SSI benefit *dollar for dollar*
- However, bills paid directly to the supplier of services other than food and shelter will not result in a reduction of SSI benefits
- When a third party pays for an SSI recipient's food and shelter, that results in a reduction in the SSI payment of either the dollar amount paid for the food and shelter, or 1/3 of the SSI amount, whichever is less

Coordination with Medicaid and SSI

- Home owned by SNT
 - A home owned by an SNT is not a countable resource for SSI or Medicaid, even if the beneficiary does not reside in the home, as it is a trust asset
 - The use of trust assets to purchase a home will not reduce Medicaid benefits
 - However, the purchase of the home by the trust will be considered in-kind support that will cause a 1/3 reduction of SSI in the month of purchase
 - If the SNT pays for shelter costs for the beneficiary, that will reduce the monthly SSI benefit by up to 1/3
 - If the SNT owns the home but does not pay for housing costs, there is no reduction in SSI monthly benefits

Anatomy of a Trust: **Supplemental Needs Trusts**

ELIZABETH FORSPAN, ESQ.

April 2017



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